UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

COSTA CONSTRUCTION & CONSULTING CORP.

Employer

and **Case No. 29-RC-10517**

HIGHWAY, ROAD AND STREET CONSTRUCTION LABORERS LOCAL UNION 1010 OF THE DISTRICT COUNCIL OF PAVERS AND ROAD BUILDERS, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Emily Cabrera, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Costa Construction & Consulting Corp., herein called the Employer, a domestic corporation, with an office and principal place of business located at 50 Brook Avenue, Deer Park, New York, is engaged in the construction industry. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations

described above, provided services valued in excess of $50,000 to customers located within the State of New York, including the New York City Design and Construction Corporation,[1] which customers meet the Board's direct standards for the assertion of jurisdiction.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent the following unit of employees:

> All full-time and regular part-time[2] site & grounds improvement, utility, paving & road building workers who primarily perform the laying of concrete, concrete curb setting, or block work, including foremen, form setters, laborers, landscape planting and maintenance employees, fence installers & repairers, slurry/seal coaters, play equipment installers, maintenance safety surfacers, and small power tools & small equipment operators employed by the Employer, who work primarily in the five boroughs of New York City, but EXCLUDING all employees who perform primarily asphalt paving work and/or who are currently represented by the Sheet Asphalt Workers Local Union 1018 of the District Council of Pavers and Road Builders of the Laborers International Union of North America, AFL-CIO, or by Local 175, United Plant and Production Workers, and excluding clericals, guards, and supervisors as defined in Section 2(11) of the Act.

[1] Also referred to in related proceedings as the New York City Division of Design and Construction and the New York City Design and Construction Agency.

[2] Also eligible to vote are all unit employees who have been employed for a total of 30 working days or more within the 12 months immediately preceding the eligibility date, or who have had some employment during that period and who have been employed 45 days or more within the 24 months immediately preceding the election eligibility date.

The Employer took the position that it has not employed any unit employees in the past two years. While conceding that it will be hiring unit employees in the future, pursuant to a contract with the New York City Design and Construction Agency, the Employer stated that the contract has been delayed for more than six months, and that it is uncertain when the work will begin.

The Petitioner admitted on the record that it is not aware of any specific evidence that employees of the Employer are currently performing bargaining unit work.

Discussion

Although the Employer acknowledged that it will be hiring unit employees in the future, an election in an expanding workforce is not appropriate unless "the present workforce constitutes a 'substantial and representative complement' of the employer's reasonably foreseeable future workforce." *Deutsche Post Global Mail Ltd*., 315 F.3d 813 (7th Cir. 2003); *see Toto Industries*, 323 NLRB 645 (1997). Moreover, "the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain." *Luckenbach Steamship Company, Inc*., 2 NLRB 192, 193 (1936); *see also Oscar David McDaniel d/b/a McDaniel Electric*, 313 NLRB 126, 127 (1993). Accordingly, in light of the lack of evidence that the Employer currently employs any unit employees, the dismissal of the instant petition is warranted.

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

RIGHT TO REOUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations

Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **September 29, 2005.** The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Dated: September 15, 2005.

/S/ ALVIN BLYER

Alvin Blyer
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